

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

UNITED STATES DISTRICT COURT

2011 JAN -3 PM 4:12

SOUTHERN DISTRICT OF GEORGIA

CLERK

S. Moore
SO. DIST. OF GA.

SAVANNAH DIVISION

HARRY D. PINCKNEY)

v.)

Case No. CR409-026

CV410-182

UNITED STATES OF AMERICA)

ORDER

After a careful *de novo* review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

The effect of this Order is to permit movant to pursue an out-of-time direct appeal, which is governed by the procedures set forth in *United States v. Phillips*, 225 F.3d 1198, 1201 (11th Cir. 2000). Pursuant to *Phillips*, the Court hereby re-imposes the same sentence set forth in the original judgment in *United States v. Pinckney*, No. CR409-026 doc. 20 (entered November 17, 2009). The probation office is **DIRECTED** to prepare *instantly* a new judgment and commitment order identical in all

respects to the original judgment and commitment order except for the date of the imposition of the judgment. As it is clear that movant desires to take an appeal, the Court **DIRECTS** the Clerk to file a notice of appeal on movant's behalf immediately upon the entry of the reimposed judgment and commitment order.¹

Movant is entitled to the assistance of counsel on direct appeal. As movant appears to be indigent, the Court **DIRECTS** that Joseph C. Kitchings, who was appointed to represent movant during the § 2255 evidentiary hearing, shall continue to represent him on appeal. By copy of this Order to Mr. Kitchings, he is informed of this Order and Pinckney's concomitant rights. *See Holloway v. United States*, 2009 WL 2340686 at *4 (S.D. Ga. Jul. 27, 2009).

SO ORDERED this 3RD day of JANUARY 2011.


WILLIAM T. MOORE, JR.,
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹ Pursuant to *Phillips*, movant is advised that he has the right to appeal the re-imposed conviction and sentence, that he is entitled to representation by counsel on appeal, and that the notice of appeal (NOA) must be filed within ten days of the entry of the re-imposed judgment. 225 F.3d at 1201. He will be relieved of the need to file an NOA once the Clerk files one for him.